

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

In Re: _____)
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GRAND JURY

5:19-MJ-1036

JANUARY 18, 2019
SEALED HEARING
BEFORE THE HONORABLE TERRENCE W. BOYLE
CHIEF UNITED STATES DISTRICT JUDGE

APPEARANCES:

On Behalf of the Government:

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On Behalf of the State Board of Elections:

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AMY M. CONDON, CRR, RPR, CSR
Official Court Reporter
United States District Court
Raleigh, North Carolina
Stenotype with computer-aided transcription

1 (Friday, January 18, 2019 commencing at 3:05 p.m.)

2 P R O C E E D I N G S

3 THE COURT: This is a core Grand Jury matter in front
4 of the Court for a hearing on motions to quash.

5 The courtroom is closed. The matters discussed and
6 reported here and decided here are under seal and no one is
7 authorized to violate that seal under threat of sanction from
8 the Court, just to set the ground rules.

9 The Court recognizes there is subpoenas that have
10 been issued by the United States Attorney returnable to the
11 Grand Jury and that in two instances the North Carolina
12 Department of Motor Vehicles and the North Carolina, I guess,
13 Board of Elections, if that's the correct nomenclature, have
14 moved to quash the subpoenas and the United States has
15 responded to that.

16 I'll recognize the United States to explain its
17 response.

18 PLF ATTY: Thank you, Your Honor.

19 This investigation as we explained in the briefs
20 began on election day in 2016 with a disclosure from the State
21 Board to Homeland Security Investigations about two potential
22 instances of noncitizens who were believed to have voted in
23 that election.

24 THE COURT: Two?

25 PLF ATTY: There were two of them at that point.

1 preserve all other reasonably responsive records.

2 And then as the Grand Jury goes, Your Honor, we
3 anticipate the Grand Jury will issue new requests. And if the
4 State -- if the State Board or County Boards or the DMV have a
5 problem or an objection with those requests at any of those
6 future points, they can certainly take those up with the Court.
7 We don't envision this as the end all be all of any disputes
8 over the documents, Your Honor. We will have that discussion
9 with the State. We can have that discussion before the Court
10 on any motions to quash any future requests.

11 We just ask at this point those limited productions I
12 talked about be ordered, that preservation be ordered, subject,
13 of course, to the Grand Jury going back to the State Board,
14 County Board and DMV and subject to the State Board, County
15 Board and DMV objecting at that time.

16 THE COURT: Thank you.

17 Mr. Zellinger, are you here on behalf of the Attorney
18 General to represent the two boards?

19 DEF ATTY: I am, Your Honor. On behalf of the State
20 Board of Elections, the Division of Motor Vehicles, and also
21 the 44 counties of the Eastern District Board of Elections who
22 are under the State Board of Elections authority..

23 Your Honor, just to start out, the reason we're here
24 today is because the subpoena doesn't say what the Government's
25 brief says. It requests 20-million documents and voting

1 here. You're the State of North Carolina. You have plenary
2 and primary, underline this, plenary and primary authority over
3 voting. If you go to the U.S. Constitution it's one of the
4 great principles of our government is that the states set the
5 terms for voting. You can go to 50 states and you won't have
6 coincident rules at every state, and so --

7 DEF ATTY: Correct.

8 THE COURT: So you're not the enemy of the Government
9 in this; you're on the same side, and it's just a management
10 problem, I think.

11 DEF ATTY: That's correct, Your Honor.

12 And essentially, we wouldn't be here if the subpoena
13 said we want these 564 illegal registrants and we might come
14 back with a Grand Jury subpoena later on for more
15 individuals --

16 THE COURT: But they don't want to come back later on
17 and say, oh, my gosh, we had a doomsday on preserving
18 information and we got rid of it all.

19 DEF ATTY: We understand that.

20 But, Judge, the mechanism through which these items
21 would be preserved, whether it's through a Court order, whether
22 it's through an overburdensome Grand Jury subpoena or
23 whether -- sometimes there is investigations done by the State
24 Board of Elections into malfeasance in the state or legislative
25 actions and they send out documents, these category of

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5 CERTIFICATE OF OFFICIAL REPORTER
6

7 I, Amy M. Condon, CRR, RPR, CSR, Federal Official Court
8 Reporter, in and for the United States District Court for the
9 Eastern District of North Carolina, do hereby certify that
10 pursuant to Section 753, Title 28, United States Code, that the
11 foregoing is a true and correct transcript of the
12 stenographically reported proceedings held in the
13 above-entitled matter and that the transcript page format is in
14 conformance with the regulations of the Judicial Conference of
15 the United States.
16
17

18 Dated this 1st day of February, 2019.
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21 /s/ Amy M. Condon
22 Amy M. Condon, CRR, CSR, RPR
23 U.S. Official Court Reporter
24
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